

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

STEWART TITLE GUARANTY  
COMPANY,  
Plaintiff/Third-party Plaintiff,

v.

UBS PRINCIPAL FINANCE LLC  
I-PARK GROVE WILLOW LLC,  
I-PARK WEST SEYON LLC, and  
CHICAGO TITLE INSURANCE  
COMPANY,  
Defendants,

v.

BSC GROUP, INC.,  
Third-party Plaintiff.

DOCKET NO. 04-10783-GAO

**ANSWER TO THE THIRD-PARTY COMPLAINT OF CHICAGO TITLE INSURANCE COMPANY, AFFIRMATIVE DEFENSES, AND JURY DEMAND OF BSC GROUP, INC.**

The Third-party Defendant, BSC Group, Inc. (“BSC”), denies the allegations of negligence contained in the introductory paragraph of Chicago Title Insurance Company’s (“Chicago Title”) Third-party Complaint and answers the allegation contained in the Third-party Complaint as follows:

1. BSC is without knowledge or information sufficient to admit the allegations contained in paragraph 1 of the Third-party Complaint.
2. BSC admits the allegations contained in paragraph 2 of the Third-party Complaint.
3. The allegations contained in paragraph 3 of the Third-party Complaint include legal conclusions to which no response is required. To the extent a response is required, BSC denies the allegations.

4. The allegations contained in paragraph 4 of the Third-party Complaint include legal conclusions to which no response is required. To the extent a response is required, BSC denies the allegations.

5. BSC admits the allegations contained in paragraph 5 of the Third-party Complaint.

6. BSC admits the allegations contained in paragraph 6 of the Third-party Complaint.

7. BSC admits preparing a plan with the title alleged in paragraph 7 of the Third-party Complaint, but is unable to verify that the attached exhibit is a true and accurate copy of such plan do to the reduction of the copy.

8. BSC admits preparing a plan with the title alleged in paragraph 8 of the Third-party Complaint, but is unable to verify that the attached exhibit is a true and accurate copy of such plan do to the reduction of the copy.

9. BSC admits preparing a plan with the title alleged in paragraph 9 of the Third-party Complaint, but is unable to verify that the attached exhibit is a true and accurate copy of such plan do to the reduction of the copy.

10. BSC admits preparing a plan with the title alleged in paragraph 10 of the Third-party Complaint, but is unable to verify that the attached exhibit is a true and accurate copy of such plan do to the reduction of the copy.

11. BSC admits preparing a plan with the title alleged in paragraph 11 of the Third-party Complaint, but is unable to verify that the attached exhibit is a true and accurate copy of such plan do to the reduction of the copy.

12. BSC admits the allegations contained in paragraph 12 of the Third-party Complaint.

13. BSC admits the allegations contained in paragraph 13 of the Third-party Complaint.

14. BSC states that the certifications speak for themselves and deny the allegations contained in paragraph 14 of the Third-party Complaint to the extent they are inconsistent with the certifications.

21 (sic) BSC denies the allegations contained in paragraph 21 (sic) of the Third-party Complaint.

15. BSC is without knowledge or information necessary to admit or deny the allegations contained in paragraph 15 of the Third-party Complaint.

16. BSC is without knowledge or information necessary to admit or deny the allegations contained in paragraph 16 of the Third-party Complaint.

17. BSC denies the allegations contained in paragraph 17 of the Third-party Complaint.

18. BSC is without knowledge or information sufficient to admit or deny the allegations contained in paragraph 18 of the Third-party Complaint.

19. BSC denies the allegations contained in paragraph 19 of the Third-party Complaint.

20. BSC is without knowledge or information sufficient to admit or deny the allegations contained in paragraph 20 of the Third-party Complaint.

21. (There is no paragraph 21)

22. BSC denies the allegations contained in paragraph 22 of the Third-party Complaint.

23. BSC denies the allegations contained in paragraph 23 of the Third-party Complaint.

24. BSC denies the allegations contained in paragraph 24 of the Third-party Complaint.

25. BSC denies that its surveys were inaccurate or that the certifications were false, and is without knowledge or information to admit or deny the remaining allegations contained in paragraph 25 of the Third-party Complaint.

26. BSC is without knowledge or information sufficient to admit or deny the allegations contained in paragraph 26 of the Third-party Complaint.

27. BSC denies that its surveys contained errors, and is without knowledge or information to admit or deny the remaining allegations contained in paragraph 27 of the Third-party Complaint.

28. BSC is without knowledge or information sufficient to admit or deny the allegations contained in paragraph 28 of the Third-party Complaint.

29. BSC is without knowledge or information sufficient to admit or deny the allegations contained in paragraph 29 of the Third-party Complaint.

30. BSC is without knowledge or information sufficient to admit or deny the allegations contained in paragraph 30 of the Third-party Complaint.

31. BSC is without knowledge or information sufficient to admit or deny the allegations contained in paragraph 31 of the Third-party Complaint.

32. BSC is without knowledge or information sufficient to admit or deny the allegations contained in paragraph 32 of the Third-party Complaint.

33. BSC is without knowledge or information sufficient to admit or deny the allegations contained in paragraph 33 of the Third-party Complaint.

### **COUNT I**

34. BSC incorporates and reasserts its responses to paragraphs 1 to 33 of the Third-party Complaint as if fully set forth herein.

35. BSC admits that part of its services include land surveying.

36. It is BSC's understanding that Chicago Title provides title insurance to various entities.

37. BSC denies the allegations contained in paragraph 37 of the Third-party Complaint.

38. BSC is without knowledge or information sufficient to admit or deny the allegations contained in paragraph 38 of the Third-party Complaint.

39. BSC denies the allegations contained in paragraph 39 of the Third-party Complaint.

40. BSC denies the allegations contained in paragraph 40 of the Third-party Complaint.

41. BSC denies the allegations contained in paragraph 41 of the Third-party Complaint.

## **COUNT II**

42. BSC incorporates and reasserts its responses to paragraphs 1 to 41 of the Third-party Complaint as if fully set forth herein.

43. BSC denies the allegations contained in paragraph 43 of the Third-party Complaint.

44. BSC denies the allegations contained in paragraph 44 of the Third-party Complaint.

45. BSC denies the allegations contained in paragraph 45 of the Third-party Complaint.

## **COUNT III**

46. BSC incorporates and reasserts its responses to paragraphs 1 to 45 of the Third-party Complaint as if fully set forth herein.

47. BSC denies the allegations contained in paragraph 47 of the Third-party Complaint.

48. BSC denies the allegations contained in paragraph 48 of the Third-party Complaint.

#### **COUNT IV**

49. BSC incorporates and reasserts its responses to paragraphs 1 to 48 of the Third-part Complaint as if fully set forth herein.

50. BSC admits the allegations contained in paragraph 50 of the Third-party Complaint.

51. BSC denies the allegations contained in paragraph 51 of the Third-party Complaint.

52. BSC denies the allegations contained in paragraph 52 of the Third-party Complaint.

53. BSC denies the allegations contained in paragraph 53 of the Third-party Complaint.

#### **COUNT V**

54. BSC incorporates and reasserts its responses to paragraphs 1 to 53 of the Third-part Complaint as if fully set forth herein.

55. BSC is without knowledge or information sufficient to admit or deny the allegations contained in paragraph 55 of the Third-party Complaint.

56. BSC denies the allegations contained in paragraph 56 of the Third-party Complaint.

57. BSC is without knowledge or information sufficient to admit or deny the allegations contained in paragraph 57 of the Third-party Complaint.

58. BSC denies the allegations contained in paragraph 58 of the Third-party Complaint.

59. BSC denies the allegations contained in paragraph 59 of the Third-party Complaint.

60. BSC denies the allegations contained in paragraph 60 of the Third-party Complaint.

61. BSC denies the allegations contained in paragraph 61 of the Third-party Complaint.

#### **COUNT VI**

62. BSC incorporates and reasserts its responses to paragraphs 1 to 61 of the Third-party Complaint as if fully set forth herein.

63. BSC denies the allegations contained in paragraph 63 of the Third-party Complaint.

64. BSC denies the allegations contained in paragraph 64 of the Third-party Complaint.

65. BSC denies the allegations contained in paragraph 65 of the Third-party Complaint.

66. BSC denies the allegations contained in paragraph 66 of the Third-party Complaint.

#### **COUNT VII**

67. BSC incorporates and reasserts its responses to paragraphs 1 to 66 of the Third-party Complaint as if fully set forth herein.

68. BSC denies the allegations contained in paragraph 68 of the Third-party Complaint.

69. BSC denies the allegations contained in paragraph 69 of the Third-party Complaint.

70. BSC denies the allegations contained in paragraph 70 of the Third-party Complaint.

### **COUNT VIII**

71. BSC incorporates and reasserts its responses to paragraphs 1 to 71 of the Third-party Complaint as if fully set forth herein.

72. BSC admits the allegations contained in paragraph 72 of the Third-party Complaint.

73. BSC denies the allegations contained in paragraph 73 of the Third-party Complaint.

74. BSC denies the allegations contained in paragraph 74 of the Third-party Complaint.

75. BSC denies the allegations contained in paragraph 75 of the Third-party Complaint.

76. BSC denies the allegations contained in paragraph 76 of the Third-party Complaint.

### **COUNT IX**

77. BSC incorporates and reasserts its responses to paragraphs 1 to 77 of the Third-party Complaint as if fully set forth herein.

78. BSC states that the First Amended Complaint speaks for itself and denies the allegations contained in paragraph 78 to the extent they are inconsistent with the First Amended Complaint.

79. BSC denies the allegations contained in paragraph 79 of the Third-party Complaint.



80. BSC denies the allegations contained in paragraph 80 of the Third-party Complaint.

### **AFFIRMATIVE DEFENSES**

#### **FIRST AFFIRMATIVE DEFENSE**

The Third-party Complaint fails to state a claim against BSC for which relief can be granted.

#### **SECOND AFFIRMATIVE DEFENSE**

Chicago Title's claims are barred by the doctrine of estoppel, waiver and/or unclean hands.

#### **THIRD AFFIRMATIVE DEFENSE**

BSC acted in good faith with respect to its decisions, determinations and other actions performed under the agreements in this action and, therefore, is entitled to immunity from the claims asserted in this action.

#### **FOURTH AFFIRMATIVE DEFENSE**

Chicago Title's claims are barred by the settlement agreement of its subrogors or assignors with Stewart Title.

#### **FIFTH AFFIRMATIVE DEFENSE**

Chicago Title's claims are limited by the limitation of liability clauses in BSC's agreement(s) for services.

#### **SIXTH AFFIRMATIVE DEFENSE**

The Third-party Complaint is procedurally deficient and inappropriate for bringing BSC into this action.

**SEVENTH AFFIRMATIVE DEFENSE**

If Chicago Title were damaged as alleged, which BSC denies, then said damage resulted from the acts and or omissions of persons for whose conduct BSC is neither legally liable nor responsible.

**EIGHTH AFFIRMATIVE DEFENSE**

The claims contained in the Third-party Complaint are barred, or any damages must be reduced, on account of the contributory negligence of Chicago Title and/or its Subrogor(s) and/or assignor(s).

**NINTH AFFIRMATIVE DEFENSE**

The claims contained in the Third-party Complaint are barred by failure of consideration.

**TENTH AFFIRMATIVE DEFENSE**

To the extent that Chicago Title has suffered any damages, which BSC denies, Chicago Title has failed to mitigate its damages.

**ELEVENTH AFFIRMATIVE DEFENSE**

Chicago Title may not recover from BSC as a result of Chicago Title's Subrogors' or Assignors' failure to render performance in accordance with contract terms.

**WHEREFORE**, BSC respectfully requests that this Court issue an order dismissing the Third-party Complaint and awarding attorneys' fees and cost incurred in the defense of this action.

**JURY DEMAND**

BSC respectfully demands a trial by jury to the fullest extent permitted by law.

Respectfully submitted by  
BSC GROUP, INC.  
by its attorneys,

/s/Nancy M. Reimer

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January 28, 2005

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the  
above document was served upon the  
attorney of record for each other party  
by mail ~~hand fax~~ on 01-28-05

/s/Nicholas A. Ogden